

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment A

7

**Remarks – General****RECEIVED  
CENTRAL FAX CENTER****JAN 28 2008****Claims:**

Applicant has amended the claims to more particularly point out Applicant's invention.

**IDS**

Applicant has sent the missing information from the IDS of September 10, 2007. Please also see NPL documents 6-01-2006

**Claim Rejections Under 35 USC § 102****Musher Teaches of Many Components, Not Two Ingredient Materials**

Claims 289-318 have been rejected under 35 U.S.C. 102(b) as being anticipated by Musher (US 2217700).

The Examiner notes: "Musher teaches ice cream (frozen comestible) on an edible support *structure* made of stick, which can be either edible or inedible, as instantly claimed. The edible stick as taught by Musher is *attached* to the cereal flakes, sugar, candy flakes or ribbons, grains hard fat flakes or ribbons..." "Thus Musher teaches of a frozen comestible, and a composite material with one or more ingredients, for supporting the frozen comestible."

Applicant's claims recite:

- 319. A support for a frozen comestible comprising two edible ingredient materials.
- 332. A support for a frozen comestible comprising two combined edible ingredient materials.
- 338. A support for a frozen comestible comprising an edible composite material.

To the contrary, Musher has not anticipated Applicant's claims. The Examiner has not shown that Musher, or any reference, alone or in combination, that comprises a support for a frozen comestible that comprises two edible ingredient materials, two edible combined ingredient materials, an edible composite material, or a method of making a support for a frozen comestible

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment A

8

comprising two edible ingredient materials.

Musher does not show a non frozen support, but a support that is frozen. Applicant's non frozen support is novel over the frozen support of Musher.

In addition, the attachment of Musher's stick to the framework, as suggested by the Examiner to teach a composite material, attaches a baked stick structure to an edible framework structure. Attaching the stick to the framework attaches two structures of the support together with a component of the support, i.e. the *topping* over the top portion of the stick, or edible cement. (Page 6, col. 1, lls. 13-19); (see Figures 1, 2, as opposed to Figure 3). Musher attaches two different components together. Musher shows only components of the support, each of which is comprised of only one material, not two. Applicant comprises, and further attaches two ingredient materials within the same component. Musher does not do this. Musher *does not show* a support comprising *two* edible ingredient materials, or a support comprising an edible composite material. (Reference.com IDS)

More particularly, the particulate framework structure of Musher is made of a plurality of edible surface coated flakes and pieces, or components, that are each individually coated. Musher teaches:

"Each of the flakes 10 in this illustration is provided with a coating 11..." (Page 6, col. 1, lls. 13-19)

Example I:

An example of one embodiment of this invention is to mix 200 grams of dry corn flakes together with 120 grams of glucose of about 40° Baumé, and then to place this in a mold with a stick placed within the unit structure to the extent of about one-third or one-half of the length of this unit structure.

Example II:

The binding material that is placed into the hole will attach itself to the stick and will also seep onto and around the other flakes or structure pieces, and thereby there will result a substantially firm anchorage of the holder within the confection. Of course, the binding material should be allowed to congeal or harden, after which the stick will be held in a very firm position.

Example III:

The fat is melted and heated to 200° F. At this point the flakes are added into the molten fat and are mixed thoroughly therein in order to thoroughly coat these structure pieces.

Example IV:

This syrup is cooled so that it will not substantially soften the flakes when it is mixed therewith. This syrup is then mixed with 50 grams of the flakes or similar structure pieces so as to thoroughly coat all of the flakes.

Example V:

At this point 50 grams of the flakes, for instance, are mixed into this fat combination and the product is completed as described in Example III above.

Therefore, *each* of the framework components, or framework structure pieces, that are bonded together to make the framework structure comprise only one material. (Pg. 1, col. 2, lls. 3-6) The baked stick of Musher also comprises only a single material, baked dough, not two ingredient materials. The edible coating component also comprises only one material, edible binder, i.e. hard fat, melted sugars, or the like. Enlargements 19 are also components of the support and are held in place by "joining them firmly with the adhesive coating 17." (Page 6, col. 1, lls. 69-71) and are not ingredient materials, i.e. wing parts, Tuwien, above, IDS. Additionally, Musher's coating may rapidly dissolve and is not indicative of one of two ingredient materials. (Page 2, col. 2, lls. 13-24) None of Musher's components comprise two ingredient materials.

### **Musher Does Not Put Voids In A Support Having Two Ingredient Materials**

Musher does not show voids in a support comprising two ingredient materials, but openings in the framework structure whose components each comprise only a single material. Musher does not show a support for a frozen confection that comprises two edible ingredient materials, two combined ingredient materials, or an edible composite material, as Musher's *frozen* support shows only one material in each component.

The Examiner suggests that the composite support as taught by Musher has plurality of individual ingredients which can be discernible such as the cereal flakes, candy flakes, ribbons grains etc. and that Musher further teaches the support structure for the frozen confection includes an edible stick or lollipop, where the composite support is made by attaching the stick to the cereal flakes, sugar,

candy flakes or ribbons , grains, hard fat flakes or ribbons by a coating.

Musher's cereal flakes, raisins, etc. are individually coated, as above, and show only one material, not two ingredient materials. Musher adds a lollipop to a support having only one material, baked dough. Musher does not add a coating to a support that already comprises two ingredient materials. Musher applies a coating to a support that comprises only one material, baked dough and attaches the components together by the edible coating, where each of the components comprise only one material. A total outside coating is added over ice cream with a support having several components each having only a single material.

The Examiner suggests that Musher provides at least two discernable edible materials *or* components *or* members, and a three dimensional support.

Musher's components are not ingredient materials, since they are structure pieces, or components of the framework structure. (Tuwien, below) Each piece is individually coated and each has only a single material. Applicant's components also may each comprise two ingredient materials added to a support that already comprises two ingredient materials, such as the lollipop that comprises two ingredient materials added to a support that already comprises two ingredient materials. Musher does not show two ingredient materials in any one of his components. Musher does not show a lollipop added to a support comprising two ingredient materials. Musher does not show two ingredient materials in his support.

[http://mmc-assess.tuwien.ac.at/public/v1\\_glossary.pdf](http://mmc-assess.tuwien.ac.at/public/v1_glossary.pdf)

**Composite:** A composite (or composite material) is defined as a material that consists of at least two constituents (distinct phases or combinations of phases) which are bonded together along the interface in the composite, each of which originates from a separate ingredient material which pre-exists the composite.

The essential elements of this definition are

(i) composite refers to a material, as opposed to a structure or a component; as such a composite material is used for the *fabrication of components of various shapes or functions*, ~~thus~~ it should be distinguished from a wing or other structure made of several

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment A

11

components bonded together, and from an electronic device or packaging structure made of layered materials (although one of the materials in the packaging could be considered a composite);

Musher recites:

Another object of this invention is to provide a framework structure which may be used as a much more durable foundation, support, or structure for ice cream or for products which harden, congeal or are frozen from a relatively fluid material into a relatively hardened form. These products may be sold in brick form, or they may be merchandised by attachment to a stick or other holder. (Pg. 1, col. 1, lls. 9-17)

These ready-to-eat cereals are bound together into a durable structure by the use of a binding agent, which should have the characteristic of providing a sufficiently durable bond. (Pg. 1, col. 1, lls. 43-46)

Also, preferably, the cereal flakes or the high starch \*structure pieces that may be used, are preferably toasted or baked so as to crisp or harden them. (Pg. 1, col. 2, lls. 3-6)

Musher binds several components together. He does not bind two materials together within a single component making two ingredient materials. Components bound together, as in a wing or other structure made of several components, or Musher's framework "structure pieces," (directly above) is to be distinguished from a composite material, (and thus two ingredient materials.) (Tuwien, above) Applicant provides a support comprising two ingredient materials. Musher provides only one material to any one component and therefore does not show two ingredient materials.

#### **Applicant's Two Ingredient Materials Need Not Be Attached to Each Other**

Applicant's support comprises two edible ingredient materials. Applicant's two ingredient materials may comprise, for example, a length of hollow extruded licorice that has tiny edible beads, or colored and/or flavored sugar placed within it. The beads or colored sugar are not bound to the licorice and may be poured out of the hollow candy, when desired, such as after finishing a portion of supported ice cream. Applicant's two ingredient materials may further be bound together to make an edible composite material, for example Milky Way (tm) - type ingredient materials, such as caramel paired with a whipped chocolate nougat.

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment A

12

Applicant recites:

"A length of licorice is often hollow. The hollow middle may be filled with a more fluid-type additional fun ingredient 100, or filled with another flavor of shoestring licorice, or other confection, such as little candy beads. " [0127] [0397]

### **Musher's Support Must Be Crisp**

Furthermore, Musher cannot make Applicant's support. All of Musher's framework structure must be pieces. All of the pieces must be crisp. All of the crisp pieces must be coated, all of the coated pieces must be mixed. All of the mixed pieces must have intercommunicating recesses. Musher's stick must also be crisp. Musher does not show Applicant's support that comprises two ingredient materials that may be non coated, soft, full size, or a solid material support comprising two ingredient materials. Non coated soft ingredient materials, such as a whipped nougat, may be used with another soft ingredient material, such as peanut butter. Musher's food pieces must be hard and crispy. As above, Applicant's "two ingredient materials" need not be in pieces, such as flakes, or ribbons, but may be whole, such as a full length of chocolate, or an entire cookie.

Musher does not teach of edible materials which may be supple, or any size, but is restricted to small hard food pieces coated with a hard fat, or melted sugar, and a crisp stick. (see example II) Applicant's two ingredient materials can be paired uniquely, as desired: hard with soft, hard with hard, soft with soft, have different textures, flavors, be made at low temperatures, mixed, layered, or extruded to mention only a few processes. Applicant's support can solve nearly any design problem. These are all new and unexpected results. Musher's patent, as scrutinized, as a whole, or applied to other prior art, does not anticipate Applicant's claims.

Musher does not show a support comprising non-rigid comestibles, such as nougat, gelatin, licorice, gum and other soft ingredient materials to make a soft, or chewy support. Musher requires, "*substantially rigid food pieces*." Musher also does not show two non-coated ingredient materials, which Applicant provides. He does not teach of a support that can be partly nonedible, such as a support that also may use wood, paper, or plastic. Musher does not include a support with a composite material ingredient and also be partly homogenous. He does not teach of a support that comprises caramel, or a supple, flexible ingredient material that can inhibit the

breakage of a rigid ingredient, such as pairing caramel with a cookie. Musher's edible support is stiff, "congeal or hardened." (Example II) Musher also does not implement the step of comprising two edible ingredient materials in a non frozen support for a frozen comestible. Musher does not show two ingredient materials, or an edible composite material either outrightly expressed, or inherently.

Musher has gone on to say that in an embodiment, the surface coating of melted sugar that holds the flakes can dissolve rapidly. (Pg. 2, col. 2, lls. 13-16). This is not a traditional indication of two ingredient materials, or an edible composite material and teaches away from a composite material, which are two ingredient materials bound together. One familiar in the art of making edible materials knows that the support of Musher does not show two ingredient materials, two combined ingredient materials, or an edible composite material.

#### **Applicant's Novel Two Ingredient Materials Are Unobvious**

Applicant's novel support comprising two ingredient materials that comprises flexible ingredients, whole ingredient materials, such as an entire cookie, example of Twix (tm), a variety of ingredient materials, including soft ingredients, or two non-coated ingredient materials, etc. creates new and unexpected results over the prior art, including that of Musher, and Firmin, which are genuinely unobvious. Using an entire cookie paired with a flexible and very soft ingredient, such as whipped nougat of a Milky Way, or caramel makes a reliable support that is resistant to breaking and to snapping into two pieces. The pairing of a flexible ingredient material with a crispy ingredient material can hold the support together for consumption even when the crispy portion is cracked. A single ingredient support of baked stick or boiled candy stick, even with a topping of chocolate, or a shrink wrapper, is more likely to be broken inside a packaging on a retail shelf, than Applicant's two ingredient material support, or composite material support. The prior art does not provide this feature. This is new and unexpected results. Producing the support using melting temperatures, rather than high degree baking or boiling temperatures, renders a better working environment for those at a manufacturing facility and is less expensive, since less air conditioning would be needed in the summer while manufacturing with lower temperatures. A hollow length of

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment A

14

licorice can hold tiny beads that are not attached to the licorice and is pourable from the licorice after a supported ice cream is consumed. This is unexpected results. None of the references to Applicant's knowledge show this.

Composite materials are well known to create a synergism to provide extra desired qualities for a product, such as the product being stronger, lighter, more resilient, comprise a plurality of textures, melting slower or faster, allowing for unique designs, or surprisingly may be even easier to bend, break, or break apart, (an example being for sharing) depending upon the desired end result of a product, as well as providing two identifiable tastes and two very different textures to a consumer. Musher's coating is dried to a hardened state and is brittle. Applicant's support provides these uniquely desired properties to meet a designers desired results. None of the references alone, or in combination provide these features, and/or properties. These are unexpected results.

Furthermore, Musher, Firmin, nor other prior art, add a member such as a lollipop, mess guard, drip guard, or added composite material confection (example: "fun ingredient," such as Nestle Bites (tm)) to a support, where the added member may also comprise two ingredient materials, which further includes soft ingredient materials, whole ingredient materials, non coated ingredient materials. Musher does not provide two ingredient materials that may be arranged concentrically, or provide two discernable ingredient materials, or two ingredient materials that are coated. Applicant's supports may be of any orientation, as opposed to Musher's support that is vertically orientated.

Applicant's non frozen support comprising two edible ingredient materials, two combined edible ingredient materials, or a support comprising an edible composite material is novel and unobvious over the support of Musher and all other known prior art references under § 102 and § 103. No other support for a frozen comestible known to Applicant comprises two ingredient materials for a consumer. This non frozen support creates new and unexpected results. Musher's support must be frozen. Musher's support comes with the frozen supported ice cream choice of the manufacturer. Applicant's support, such as in the shape of a cone, or tray, can be used at home to



Appn. Number 09/641,410 (Kiely)

OAU 1761

Amendment A

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CENTRAL FAX CENTER**JAN 28 2008**

make a banana split, or a sundae using a favorite ice cream of choice, with warm microwaveable toppings, or soft serve ice cream and provide two ingredient materials. No prior art or prior art combinations show this. Applicant's support provides a consumer two or more distinguishable tastes in a single support that does not have to be frozen, coated, or use the ice cream choice of a manufacturer. It also provides a choice of a totally chewy texture, a totally crispy texture, or a combined chewy and crispy texture throughout an entire support, or any portion, as desired. Inexpensive ingredient materials may be used. The prior art references and their combined teachings do not suggest Applicant's support. Applicant has taken an inventive step to make her supports for frozen comestibles, which is truly unobvious.

Independent claims 343 and 345 recite similar limitations including a means claim comprising two ingredient materials and a method claim comprising two ingredient materials and further two combined ingredient materials. These similar claims and their respective dependent claims are also respectfully submitted to be patentable over the reference to Musher and should be allowed.

### **Conclusion**

For all of the above reasons, Applicant submits that the claims define novel structure under §102, which novel structure is unobvious and thus patentable under §103. Accordingly Applicant respectfully requests reconsideration and allowance of the claims.

### **Conditional Request For Constructive Assistance**

Applicant submits that she has a novel and unobvious invention. She has made a diligent effort to amend the claims of this application so that they recite novel features of her invention, which she submits are unobvious. If, for any reason, the Examiner believes that the claims of this application are not yet in full condition for allowance, Applicant respectfully requests the Examiner's constructive assistance and suggestions pursuant to the spirit of MPEP §706.03(d) and §707.07(j). This will enable the undersigned to place this application in fully allowable condition as soon as possible and without the need for further proceedings.

Appn. Number 09/641,410 (Kiely)

GAU 1761

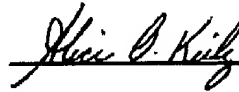
Amendment A

16

Very Respectfully,

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JAN 28 2008

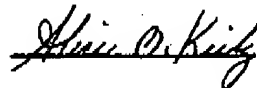


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2008 January 28,



Alice O. Kiely

Attached:

IDS:

- 1) [http://www.mygroceryshop.com.au/index.php?main\\_page-popup\\_image&pID=14541](http://www.mygroceryshop.com.au/index.php?main_page-popup_image&pID=14541) Image of Nestle Kit Kat Bites bite size composite candy - 1 page
- 2) What are MMC tuwien; composite material, ingredient materials - 1 page
- 3) <http://www.reference.com/search?q=composite%20material> -2 pages
- 4) Image of IDS three disclosure documents signed by Examiner Stephen Weinstein 12/15/04 - 1 page